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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JAN 22 2010

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**Uniform Issue List: 408.03-00**

SETTLEMENT

**Legend:**

Taxpayer A =

Account B =

Financial Institution C =

Policy D =

Financial Institution E =

Financial Institution F =

Financial Institution G =

Amount 1 =

Dear :

This is in response to your submission dated September 17, 2009, as modified and supplemented by additional correspondence dated November 13, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

Taxpayer asserts that the failure to accomplish the rollover within the 60-day period described by section 408(d)(3) of the Code was due to the distribution of Amount 1 from Account B being taken without his knowledge or consent. Taxpayer further represents that Amount 1 has not been used for any other purpose.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer was \_\_\_\_\_ at the time of the distribution of Amount 1 from Account B, an individual retirement arrangement ("IRA") established and maintained at Financial Institution C.

Taxpayer represents that he was hospitalized from June 23, 20\_\_\_\_ to July 8, \_\_\_\_\_ and then transferred to a long-term health facility, where he resided from July 8 through December 5, 2008. He returned home on December 5, 20\_\_\_\_, to convalesce with home care. During his residence in the long-term health facility, Taxpayer A decided to cancel his long-term care insurance policy (Policy D), administered by Financial Institution E. Taxpayer A represents that he requested his power of attorney for financial affairs ("power of attorney") to cancel Policy D because his medical conditions were excluded under the policy and his care was not being covered. Taxpayer A further represents that the power of attorney requested the surrender of Account B rather than Policy D. The distribution check for Amount 1 was issued on December 11, 20\_\_\_\_ and delivered to Taxpayer A's home address. When he discovered that he had received Amount 1 on January 7, 20\_\_\_\_, he directed the power of attorney to deposit it into his account at Financial Institution F. Taxpayer A was not aware that Amount 1 was a distribution from Account B until the power of attorney met with Taxpayer A's accountant on March 19, 20\_\_\_\_. The power of attorney deposited Amount 1 into an IRA Account for Taxpayer A at Financial Institution G on April 2, 20\_\_\_\_ where it remains.

Based on the above facts and representations, Taxpayer requests a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from Account B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if: (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum

amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Section 401(a)(9) of the Code provides the rules for required minimum distributions from a qualified plan. Section 401(a)(9)(A) provides, in pertinent part, that a trust shall not constitute a qualified trust unless the plan provides that the entire interest of each employee will be distributed or commence to be distributed to such employee not later than the required beginning date. Section 401(a)(9)(C) defines the term "required beginning date" as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½, or the calendar year in which the employee retires.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by the unexpected distribution from his IRA which occurred without his knowledge or consent.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Account B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such distribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by Code section 401(a)(9).

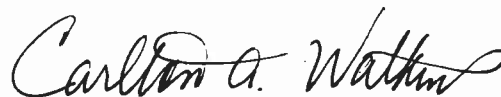
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXX XXXXXXXX  
phone at (XXX) XXX-XXXX or by fax  
at (XXX) XXX-XXXX. Please address all correspondence to

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: